

in Water Soluble Base Glycerine and  $\frac{1}{2}$  of 1% Phenol Added Net Weight Approx.  $\frac{3}{4}$  Ounce."

NATURE OF CHARGE: Adulteration, Section 501 (c), the quality of the article fell below that which it purported and was represented to possess since it did not have the consistency of an ointment.

Misbranding, Section 502 (a), the designation "Burn Ointment" and the quantity of contents statement " $2\frac{1}{2}$  Oz." appearing on the box label were false and misleading as applied to the article, which was not an ointment and which contained 2  $\frac{3}{4}$ -ounce tubes.

DISPOSITION: December 11, 1952. Default decree of condemnation and destruction.

### DRUGS AND DEVICES ACTIONABLE BECAUSE OF FALSE AND MISLEADING CLAIMS\*

3892. Misbranding of crude drugs. U. S. v. 100 Pounds, etc. (F. D. C. No. 32207. Sample Nos. 26813-L, 26815-L, 26816-L, 26818-L to 26821-L, incl., 26823-L to 26829-L, incl., 26831-L to 26837-L, incl., 26843-L, 26844-L, 26849-L, 26850-L, 26852-L, 26855-L, 26857-L to 26859-L, incl.)

LIBEL FILED: On or about December 17, 1951, Northern District of California.

INTERSTATE SHIPMENT: Various quantities of *crude drugs* were shipped in interstate commerce to San Francisco, Calif., as follows: Between 1934 and September 22, 1950, from Hamburg, Germany; between 1943 and September 22, 1950, from Jersey City, N. J.; on or about November 21, 1941, from St. Louis, Mo.; and on or about February 22, 1949, from Deux-Acren, Belgium.

PRODUCT: 1,190 pounds of *crude drugs* at San Francisco, Calif., together with approximately 5,000 copies of a book entitled "Herbs for Health."

RESULTS OF INVESTIGATION: The books entitled "Herbs for Health" were not shipped with the drugs but were printed locally and contained statements relating to the drugs. The designations of the drugs and the statements in the booklets relative thereto are set forth in the "Nature of Charge."

NATURE OF CHARGE: Misbranding while held for sale after shipment in interstate commerce, Section 502 (a), the following statements relating to the drugs and appearing in the book "Herbs for Health" were false and misleading since they represented and suggested that the drugs were effective in the treatment of the conditions stated and implied and were capable of fulfilling the promises of benefit made for them, whereas, they were not effective in the treatment of such conditions and were not capable of fulfilling such promises:

*Agrimonium Eupatorium Herba* (agrimony), (page 138). "Agrimony \* \* \* has a tendency of invigorating the functions of stomach, liver and bowels, eliminating foul matter from the system. It is also highly recommended in the treatment of stones and gravel in kidneys and bladder. As a gargle the decoction is very effective in soreness and inflammation of mouth and throat."

*Arnica Fl.* (arnica flowers), (page 139). "In this country Arnica is mostly used in the form of the Tincture as an external application in Sprains, Bruises, to relieve inflammation and swelling. In Europe, however, it is also used internally in the treatment of Gout, Rheumatism and Feverish conditions."

*Betula Lenta Folia* (birch flowers), (page 140). "Birch \* \* \* The

\*See also Nos. 3884, 3885, 3888, 3890, 3891.

Leaves \* \* \* Has been highly recommended in complaints of the urinary organs, inflammation or gravel in kidneys and bladder."

*Scutellaria* (skullcap), (page 162). "Skullcap \* \* \* has a very beneficial influence on the nervous system, soothing and strengthening it. It is especially recommended in restlessness, nervous irritability, wakefulness, nervous weakness, convulsions and fits"; (page 196) "Skullcap-Ton. Ner. A'spa. \* \* \*" interpreted on pages 129 to 131 to mean "Ton. Tonic-Producing an increase in the tone of the system. Ner.—Nervine—An agent calming nervous excitement. A'spa.—Anti-Spasmodic—Counteracting or preventing spasms."

*Arctium Lappa Radix* (burdock root), (page 143). "Burdock Root \* \* \* is known for its blood cleansing properties and is, therefore, used in \* \* \* blood remedies. Skin eruptions, due to impurities in the blood, yield quickly to its cleansing properties. It is extensively used in scrofulous, hepatic, rheumatic and cutaneous diseases."

*Triticum Repens* (couch grass), (page 177). "Couch Grass \* \* \* Nep." interpreted on page 130 to mean "Nep.—Nephritic—An agent useful in kidney complaints"; (page 136) "Nephritics: Agents useful in kidney complaints \* \* \* Couch Grass Root"; (page 147) "Dog Grass—Couch Grass \* \* \* The Root \* \* \* is very valuable in disorders of Kidneys and Bladder and in urinary troubles that originate with colds and catarrh in these organs. It induces the proper flow of the urine, tends to relieve painful, scanty, but frequent urination. Its blood purifying properties are also quite pronounced."

*Vaccinum Myrtilla Fructus* (dried huckleberries or bilberries), (page 183). "Huckleberries \* \* \* A'sep" interpreted on page 129 to mean "A'sep.—Anti-Septic—Preventing or counteracting decay, or the formation of pus"; (page 171) "Bilberries, Black \* \* \* A'sco" interpreted on page 129 to mean "A'sco—Anti-Scorbutic—Preventing or relieving scurvy"; (page 139) "Bilberry or Huckleberry \* \* \* The berries are an excellent remedy in diarrhea and their juice mixed with water affords a very refreshing drink in all feverish conditions."

*Chimaphila Umb Folia* (pipsissewa), (page 159). "Princess Pine (Pipsissewa) \* \* \* These leaves are extensively used in disorders of the urinary organs; especially to relieve irritation and catarrhal conditions of Kidneys and Bladder, for the reduction of uric acid and against deposits of stones and gravel."

*Plantago Herba* (plantain), (page 191). "Plantain Herb-Pect. A'sept. \* \* \* Vul." interpreted on pages 129 to 131 to mean "A'sep—Anti-Septic—Preventing or counteracting decay, or the formation of pus. \* \* \* Pec.—Pectoral—A remedy for diseases of chest and lungs \* \* \* Vul.—Vulnerary—An agent favoring the healing of wounds and cuts"; (page 157) "Plantain \* \* \* relieves coughs, bronchitis, hoarseness and loosens catarrhal obstructions from bronchial tubes and lungs. It is also used externally as a poultice on old, badly healing ulcers and sores, inflamed eyes and muscles."

*Phytolacca Dec. Radix* (poke root), (page 158). "Poke Root \* \* \* This root has a very favorable influence on the glandular system, inciting and increasing its action. Regulates liver and bowels and cleans the blood. It is, therefore, highly valued in rheumatic conditions and affections of the skin due to impurities in the blood."

*Hypericum* (St. John's Wort), (page 197). "St. Johnswort \* \* \* Pect." interpreted on page 130 to mean "Pec.—Pectoral—A remedy for diseases of chest and lungs"; (page 163) "St. John's Wort \* \* \* This herb exerts a very beneficial influence on the nervous system, urinary organs and liver. It is

especially highly recommended in the bed wetting of children and weakness of the bladder."

*Shepherd's Purse Herb*, (page 162). "Shepherd's Purse \* \* \* Its decoction is used to arrest bleeding of all kinds, hemorrhages of the lungs, stomach and bowels. It is also extensively used for excessive menstrual flow."

*Ictodes* (skunk cabbage), (page 196). "Skunk Cabbage Root \* \* \* A'epi" interpreted on page 129 to mean "A'epi.—Anti-Epileptic—Opposed to epilepsy, relieving fits."

*Aletris* (true unicorn root), (page 200). "Unicorn, True Root \* \* \* Aph." interpreted on page 129 to mean "Aph.—Aphrodisiac—Stimulating the sexual passion."

*Trillium Pend.* (bethroot), (page 171). "Beth Root—F'com Aph." interpreted on pages 129 and 130 to mean "Aph.—Aphrodisiac—Stimulating the sexual passion \* \* \* F. Com.—Female Complaint—Disease peculiar to woman"; (page 133) "Anti-Spasmodics: Counteracting or preventing spasms"; (page 139) "Beth Root \* \* \* A highly prized Indian remedy to stop bleeding from lungs, bowels, kidneys, and to arrest excessive menstrual flow. In coughs, bronchitis and asthmatic conditions, it is said to give quick and certain relief."

*Boneset*, (page 173). "Boneset Herb—Feb." interpreted on page 130 to mean "Feb.—Febrifuge—An agent that lessens fever"; (page 141) "Boneset \* \* \* Its fever reducing \* \* \* properties makes this plant one of the most valuable herbs in colds and fevers. Catarrhal conditions due to colds yield quickly to the healing effect of this wonderful plant. It is also highly recommended as a cold preventive"; (page 135) "Febrifuges: Agents that reduce fever \* \* \* Boneset Herb."

*Rhamnus Frangula* (buckthorn bark), (page 173). "Buckthorn Bark—Hep" interpreted on page 130 to mean "Hep.—Hepatic—Promoting the action of the liver and the flow of bile"; (page 135) "Febrifuges: Agents that reduce fever \* \* \* Buckthorn Bark."

*Matricaria Anthemis Nobilis* (Hungarian chamomile flowers), (page 144). "Chamomile \* \* \* The Flowers \* \* \* Its soothing, pain relieving effect in stomach disorders and menstrual irregularities make it a most valued medicinal agent, especially in such cases where these troubles are of a nervous origin. The infusion is used externally with good results in compresses to relieve pain and swelling."

*Camomilla Romana* (Roman chamomile flowers), (page 132). "Antiperiodics: Medicines preventing the recurrence of periodic disturbances and irregularities \* \* \* Roman Chamomile."

*Dioscorea* (colic root), (page 176). "Colic Root—\* \* \* F'reg." interpreted on page 130 to mean "F'reg.—Female Regulator—An agent that regulates the menstrual flow."

*Viburnum Opulus* (cramp bark), (page 177). "Cramp Bark—A'per." interpreted on page 129 to mean "A'per.—Anti-Periodic—Preventing the recurrence of periodic disturbances and irregularities"; (page 146) "Cramp Bark \* \* \* is very effective in relieving cramps and spasms of all kinds. As it also exerts a decided influence upon the generative organs, it is especially useful in menstrual cramps and pains, giving tone and energy to the Uterus. It is claimed that its use during pregnancy has a tendency of diminishing miscarriage, especially if used with equal parts of Blazing Star Root"; (page 132) "Antiperiodics: Medicines preventing the recurrence of periodic disturbances and irregularities \* \* \* Cramp Bark."

*Vaccinum Myrtillus* (bilberry or huckleberry leaves), (page 183). "Huckleberries, Leaves \* \* \* in Diabetes"; (page 139) "Bilberry or Huckleberry \* \* \* The leaves are considered one of the best and most reliable remedies in Diabetes and also in disorders of the Urinary Organs, in gravel and stones of the Kidney and Bladder."

*Hydrangea* (hydrangea root or sevenbarks root), (pages 183 and 195). "Hydrangea Root—A'lith \* \* \* Seven Barks Root — A'lith" interpreted on page 129 to mean "A'lith—Antilithic—Preventing the formation of gravel or stones"; (page 132) "Antilithics: Medicines preventing the formation of gravel and stones \* \* \* Seven Barks Root \* \* \* Hydrangea Root."

*Quercus Rubra* (red oak bark), (page 154). "Oak bark possesses strong \* \* \* antiseptic properties. Internally it is used \* \* \* to stop mucous discharge and bleeding. \* \* \* in the form of a decoction, it is used as a gargle for sore throat and as an injection for leucorrhea \* \* \* Poultices of the ground bark are used with good results in ulcers and badly healing sores"; (page 133) "Antiseptics: Agents preventing or counteracting decay, or the formation of pus \* \* \* Oak Bark (red)."

*Berberis Aquifolium* (Oregon grape root), (page 189). "Oregon Grape Root—Hep. \* \* \* A'rheu" interpreted on pages 129 and 130 to mean "A'Rhe.—Anti-Rheumatic—Correcting and relieving rheumatism \* \* \* Hep.—Hepatic—Promoting the action of the liver and the flow of bile"; (page 156) "Oregon Grape Root *Berberis Aquifolium* \* \* \* Very valuable in jaundice, sluggishness of the liver and bowels, and rheumatic conditions. Increases the power of the digestive organs and aids the assimilation of food. Its blood cleansing properties make it also a much used remedy in skin diseases, scrofula, pimples and boils"; (page 134) "Depuratives: Removing impurities, cleaning the blood \* \* \* Oregon Grape Root."

*Anemone Pratensis* (Pulsatilla), (page 191). "Pulsatilla Herb—Heart Sedative."

*Aralia Racemosa* (spikenard root), (page 196). "Spikenard, American Root—Dep. Pect." interpreted on page 130 to mean "Dep.—Depurative—Removing impurities, cleansing the blood. \* \* \* Pec.—Pectoral—A remedy for diseases of chest and lungs."

*Viola Odorato Flores* (violet flowers), (page 200). Violet Flowers—Dep. \* \* \* Lit. Dis." interpreted on page 130 to mean "Dep.—Depurative—Removing impurities, cleansing the blood. \* \* \* Lit.—Lithotropic—An agent dissolving stones in the urinary organs. \* \* \* Dis.—Discutient—Dispersing tumors and ulcers."

*Art. Absint Herba* (wormwood herb), (page 202). "Wormwood Herb—Hep." interpreted on page 130 to mean "Hep.—Hepatic—Promoting the action of the liver and the flow of bile"; (page 168) "Wormwood *Artemisia Absinthium* \* \* \* The Herb \* \* \* Whenever the digestive organs are in a debilitated condition and the liver is sluggish, this herb has no equal in its prompt and reliable action. It promotes the flow of bile in jaundice and other liver complaints. In fever and diarrhea it also gives excellent results. Its reliable action in worms of stomach and bowels gave it its name, but as its action is powerful, it should, however, be correctly dosed. Externally it is used as a poultice for swellings, inflammation, bruises and sprains."

*Rumex Crispus* (yellow dock root), (page 202). "Yellow Dock Root \* \* \* Dep." interpreted on page 130 to mean "Dep.—Depurative—Removing impurities, cleansing the blood"; (page 168) "Yellow Dock *Rumex Crispus* \* \* \* The Root \* \* \* The blood cleansing properties of this root make it an outstanding

remedy in all diseases due to impurities in the blood. It is, therefore, especially valuable in skin eruptions, eczema, pimples, boils, rheumatic and scrofulous conditions."

The book entitled "Herbs for Health," by Dr. Otto Mausert, accompanied the drugs as labeling, while the drugs were held for sale after shipment in interstate commerce, by reason among others of the association of the book with the drugs, the sale of the book as an inducement for the purchase of the drugs, and the use of the book as part of a distributional scheme in connection with the sale of combinations of the drugs (formulas) for the symptoms, diseases, and conditions for which the drugs were recommended in the book. Illustrative of such uses were:

That Nature's Herb Co., a California corporation, was engaged at San Francisco in selling, among other things, the *crude herbs* hereinbefore described and the book "Herbs for Health" by Dr. Otto Mausert.

That Nathan Podhurst was president of the company, Dr. Mausert's widow (now M. M. Yons) was vice president, and Margaret P. Gross (Mrs. Fred Leonard and Mrs. Yon's sister) was the firm's attorney.

That the book "Herbs for Health" contained a great many combinations of crude herbs, or formulas, which were numbered, and each of the numbered formulas, when prepared as a brew as directed, was recommended for specific diseases or conditions of the body, as, for instance, Formula No. 90 was recommended "for diabetes" and Formula No. 273 for sexual weakness.

In response to an advertisement for the book, appearing in the Nature's Herb Co.'s price list, the book was ordered by F. D. Clark, Denver, Colo., and was received on May 29, 1950, from Nature's Herb Co. On June 1, 1950, Mr. Clark acknowledged receipt of the book and asked the Nature's Herb Co. where he could purchase the formulas listed therein. In reply, the Nature's Herb Co., on June 8, 1950, sent Mr. Clark a price list of the formulas listed in the book. Using the Nature's Herb Co.'s order blank, Mr. Clark ordered from the company, Formula No. 90 "For Diabetes," and the order was filled by the company on June 19, 1950. On July 1, 1950, Mr. Clark ordered Formula No. 177 "For Bright's Disease" from the book and asked if the company had Formula No. 273, also mentioned in the book for sexual weakness. Formula No. 177 was shipped, but Nature's Herb Co. wrote Mr. Clark that Formula No. 273 was available only on prescription. On August 1, 1950, Mr. Clark ordered from Nature's Herb Co., Formula No. 153 "For Gonorrhea" and Formula No. 297 "For Ulcers" mentioned in the book. These were received from the company on August 12, 1950.

Another instance illustrating the pattern of the firm's business is: In September 1950, Mr. S. Katzman, New York, N. Y., ordered a copy of the firm's catalog and price list. Upon receipt, Mr. Katzman ordered certain of the herbs and a copy of the book "Herbs for Health." In response, he received a copy of the book "Herbs for Health" (Fourth Edition, 1944). Thereafter, Mr. Katzman ordered Formulas 270, 210, and 90 from the information contained in the book, and his order was filled on January 15, 1951.

Another instance illustrating the pattern of the firm's business is: In March 1950, Mrs. R. A. Ericson, New York City, ordered from the company the book, and a copy of the 4th Edition, 1944, of "Herbs for Health" was received. From the book, Mrs. Ericson ordered from the company Formula No. 147, offered in the book as "Of especial benefit in Liver and Gall-Bladder complaints," and the merchandise was received from the Nature's Herb Co. by Mr. Ericson on or about August 10, 1950.

Another illustration of the firm's pattern of business is: On May 13, 1951, Miss Helen Hyde, San Francisco, called at the Nature's Herb Co.'s store and inquired for the book "Herbs for Health." A copy was produced from beneath the counter. Upon asking whether the herbs listed in the book could be purchased in the store, Miss Hyde was assured that they could be. Miss Hyde then requested a price list of the herbs mentioned in the book and was supplied with a copy of "Price list of Formulas Listed in Dr. O. Mausert's Book 'Herbs for Health'," 5th Edition, printed in 1951.

Further, on June 1, 1951, Dr. P. S. Jorgensen called at the San Francisco store of the Nature's Herb Co. and asked for something on how to live right. A copy of the book "Herbs for Health" was produced from beneath the store's counter, and on page 58 Dr. Jorgensen found "Formula No. 3, Powder for Asthma," a mixture of 9 plant drugs. In reply to a question by Dr. Jorgensen, as to where he could purchase this formula, he was informed, "We have the remedy here." Dr. Jorgensen purchased the book and the formula.

On June 5, 1951, a contract signed by Nathan Podhurst, president of the Nature's Herb Co., and Miss Margaret Gross, acting for the company, was entered into with Mercury Press, San Francisco, Calif., for the printing of 5,000 copies of the book "Herbs for Health."

**DISPOSITION:** October 21, 1952. The Nature's Herb Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the drugs and books be released under bond, conditioned that the drugs be relabeled in such manner that all references to the books should be excluded from the labeling and that the books be sold and distributed and otherwise disposed of in such manner that they would not become a part of any sales or distributional campaign for the sale of crude drugs sponsored by or on behalf of the claimant or any other person or firm; further, that the drugs and books should not be sold or disposed of contrary to the provisions of the Federal Food, Drug, and Cosmetic Act, or other laws.

**3893. Misbranding of Lebanon Brand herb tablets. U. S. v. 50,000 Herb Tablets, etc. (F. D. C. No. 33606. Sample No. 7627-L.)**

**LIBEL FILED:** July 25, 1952, Western District of Pennsylvania.

**ALLEGED SHIPMENT:** On or about June 27, 1949, from Cleveland, Ohio.

**PRODUCT:** 50,000 *Lebanon Brand herb tablets* at Corry, Pa., in possession of the Lebanon Co., together with a number of leaflets entitled "Lebanon Brand Herb Tablets are More Than a Laxative."

**RESULTS OF INVESTIGATION:** The Lebanon Co., after receipt of the tablets, re-packed them into 60-tablet packages and caused a number of the above-mentioned leaflets to be printed and associated with the tablets. Analysis disclosed that the tablets contained, among other things, strychnine and digitalis.

**LABEL, IN PART:** (Pkg) "Lebanon (Brand) Herb Tablets."

**NATURE OF CHARGE:** Misbranding, Section 502 (a), certain statements in the above-mentioned leaflets were false and misleading. The statements represented and suggested that the article was an adequate and effective treatment for dyspepsia, diseases of the genito-urinary system, including inflammation and retention or incontinence of urine, congested or torpid liver, chronic rheumatism, impure blood, "bad liver," poisoned system, arthritis, and vertigo or dizziness. The article was not effective for such conditions.